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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/555,718	01/12/2001	Carol Jane Batman	5727-65998	8938

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Barnes & Thornburg
11 South Meridian Street
Indianapolis, IN 46204

EXAMINER

VU, THONG H

ART UNIT PAPER NUMBER

2142

DATE MAILED: 06/08/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/555,718

Applicant(s)

BATMAN ET AL.

Examiner

Thong H Vu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5.7</u> | 6) <input type="checkbox"/> Other: _____ |

1. Claims 1-32 are pending.

Claim Objections

2. Claims 29 and 31 objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claims 1-7 and 8-28. See MPEP § 608.01(n).

Accordingly, the claims 29 and 31 have not been further treated on the merits.

3. A series of singular dependent claims is permissible in which a dependent claim refers to a preceding claim which, in turn, refers to another preceding claim.

A claim which depends from a dependent claim should not be separated by any claim which does not also depend from said dependent claim. It should be kept in mind that a dependent claim may refer to any preceding independent claim. In general, applicant's sequence will not be changed. See MPEP § 608.01(n).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-32 are rejected under 35 U.S.C. § 102(b) as being anticipated by Brown [5,307,263]

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5. As per claim 1, Brown discloses a method of configuring a hand-held instrument for determining the concentration of a medically significant component of a body fluid or a control [Brown, hand held microprocessor based unit 12 sensing blood level, Fig 1, col 7 lines 28-47], the method comprising the steps of providing a configuring computer having a first port for transmitting at least one of instructions and data for configuring the instrument, providing on the instrument a second port for receiving said at least one of instructions and data from the configuring computer, coupling said first port to said second port, transmitting said one of instructions and data to configure said instrument from said first port, receiving said one of instructions and data at said second port [Brown, a set of program instruction, col 8 lines 14-45; a modem connects a first port to a second port for transmit and receive instructions, col 11 lines 17-38]; and

configuring, said instrument according a to said one of instructions and data transmitted from said first port and received at said second port [Brown, display message or instructions, col 14 line 9-col 15 line 5].

6. As per claim 2, Brown discloses the step of providing a configuring computer having, a first port transmitting at least one of instructions and data for configuring the instrument comprise; the step of providing, a configuring computer having, a first port for transmitting, instructions for configuring the instrument [Brown, a set of program instruction, col 8 lines 14-45; a modem connects a first port to a second port for transmit and receive instructions, col 11 lines 17-38]

7. As per claim 3, Brown discloses the step of providing a configuring computer having a first port for transmitting at least one of instructions and data for configuring; the instrument comprises the step of providing a configuring computer having a first port for transmitting data for configuring the instrument [Brown, a set of program instruction, col 8 lines 14-45; a modem connects a first port to a second port for transmit and receive instructions, col 11 lines 17-38].

8. As per claim 4, Brown discloses the step of providing a configuring computer having a first port for transmitting at least one of instructions and data for configuring the instrument comprises the step of providing a configuring computer having a first port for transmitting data for configuring the instrument [Brown, a set of program instruction, col 8 lines 14-45; a modem connects a first port to a second port for transmit and receive instructions, col 11 lines 17-38].

9. As per claim 5, Brown discloses the hand-held instrument further comprises a display for displaying information related to the determined concentration, the step of transmitting said one of instructions and data to configure said instrument from said first port comprising the step of transmitting said one of instructions and data from said first port to configure said display [Brown, a set of program instruction, col 8 lines 14-45; a modem connects a first port to a second port for transmit and receive instructions, col 11 lines 17-38].

10. Claims 6,7 contains the similar limitations set forth of apparatus claim 5.

Therefore, claims 6,7 are rejected for the similar rationale set forth in claim 5.

11. As per claim 8, Brown discloses the step of transmitting one of instructions and data concerning determined concentration of a medical significant component of a body fluid from the second port to the first port [Brown, monitoring of blood glucose level, col 13 line 46-col 14 line 8; a modem connects a first port to a second port for transmit and receive instructions, col 11 lines 17-38].

12. As per claim 9, Brown discloses the step of transmitting one of instructions and data concerning determined concentration of a medical significant component of a body fluid from the second port to the first port comprises the step of transmitting data concerning determined concentration of a medically significant component of a body fluid from the instrument to the computer [Brown, monitoring of blood glucose level, col 13 line 46-col 14 line 8; a modem connects a first port to a second port for transmit and receive instructions, col 11 lines 17-38]

13. As per claim 10, Brown discloses updating a file in the computer with the transmitted data [Brown, changes in medication, col 15 lines 1-5].

14. Claims 11-13;14-16 contain the similar limitations set forth of apparatus claims 8-10. Therefore, claims 11-13;14-16 are rejected for the similar rationale set forth in claims 8-10.

15. As per claim 17, Brown discloses the step of transmitting one of instructions and data concerning determined concentration of a medically significant component of a body fluid from the second port to the first port [Brown, monitoring of blood glucose level, col 13 line 46-col 14 line 8; a modem connects a first port to a second port for transmit and receive instructions, col 11 lines 17-38].

16. As per claim 18, Brown discloses the step of transmitting one of instructions and data concerning, determined concentration or a medically significant component of a body fluid from the second port to the first port comprises the step of transmitting, data concerning determined concentration of a medically significant component of a body fluid from tile instrument to the computer [Brown, monitoring of blood glucose level, col 13 line 46-col 14 line 8; a modem connects a first port to a second port for transmit and receive instructions, col 11 lines 17-38].

17. As per claim 19, Brown discloses updating a tile in the computer with the transmitted data [Brown, changes in medication, col 15 lines 1-5].

18. Claims 20-22;23-25;26-28 contain the similar limitations set forth of apparatus claims 17-19. Therefore, claims 20-22;23-25;26-28 are rejected for the similar rationale set forth in claims 17-19.

19. As per claim 29, Brown discloses the steps of transmitting said one of instructions and data to configure said instrument from said first port and receiving said one of instructions said data at said second port comprise transmitting, said one of instructions and data through a fiber optic coupler from said first port to said second port as inherent feature of a communication link or telephone line [Brown, telephone line, col 11 lines 17-39].

20. As per claim 31, Brown discloses the step of transmitting said one of instructions and data concerning determined concentration of a medical significant component of a body fluid from the second port to the first port comprises the step of transmitting said one of instructions and data concerning determined concentration of a medically significant component of a body fluid via a modem from the second port to the first port [Brown, monitoring of blood glucose level, col 13 line 46-col 14 line 8; a modem connects a first port to a second port for transmit and receive instructions, col 11 lines 17-38].

21. As per claims 30, 32, Brown discloses the instrument comprises an instrument for determining the glucose concentration of blood, a blood fraction or a control [Brown,

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monitoring of blood glucose level, col 13 line 46-col 14 line 8; a modem connects a first port to a second port for transmit and receive instructions, col 11 lines 17-38].

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Thong Vu, whose telephone number is (703)-305-4643.

The examiner can normally be reached on Monday-Thursday from 8:00AM- 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Jack Harvey*, can be reached at (703) 305-9705.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9700.

Any response to this action should be mailed to: Commissioner of Patent and Trademarks, Washington, D.C. 20231 or faxed to :

After Final (703) 746-7238

Official: (703) 746-7239

Non-Official (703) 746-7240

Hand-delivered responses should be brought to Crystal Park 11,2121 Crystal Drive, Arlington. VA., Sixth Floor (Receptionist).

Thong Vu
Patent Examiner
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